

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

CVS TOMS RIVER, LLP¹

Employer

and

Case 4-RC-20632

RETAIL WHOLESALE AND DEPARTMENT
STORE UNION LOCAL 338, UFCW, AFL-CIO²

Petitioner

**REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION**

The Employer, CVS Toms River, LLP, operates a retail drugstore in Toms River, New Jersey. The Petitioner, Retail Wholesale and Department Store Union, Local 338, UFCW, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of approximately 29 full-time and regular part-time non-pharmacy employees (herein called “front store” employees) at the Toms River store. A hearing officer of the Board held a hearing, and the parties filed briefs with me.

The parties disagree as to whether the store’s pharmacy employees should be included in the unit along with the front store employees. The Employer contends that the only appropriate unit is a storewide unit, which would include pharmacy employees with non-pharmacy employees, while the Petitioner contends a unit limited to non-pharmacy employees is appropriate.

I have considered the evidence and the arguments presented by the parties concerning the composition of the unit, and as discussed below, I have concluded that the unit sought by the Petitioner is an appropriate unit. I will first provide a brief overview of the Employer’s operations. Then, I will review the factors that must be evaluated in determining whether the unit sought by Petitioner is an appropriate unit. Finally, I will present in detail the facts and reasoning that support my conclusion.

¹ The Employer’s name appears as amended at the hearing.

² The Petitioner’s name appears as amended at the hearing.

I. OVERVIEW OF OPERATIONS

The Toms River store sells various types of health and beauty products and prescription drugs to the general public. The store also has a lab where it develops film. The store is open 24 hours a day, seven days a week, and employees in both the front store and the pharmacy work on three shifts: 7:00 a.m. to 5:00 p.m., 3:00 p.m. to 10:00 p.m., and 10:00 p.m. to 8:00 a.m.

The body of the store consists of 16 aisles containing retail merchandise. The front checkout area, which contains four cash registers, is located at the front of the store. Near the front checkout area is a merchandise display of candy, cameras, film, batteries, magazines, and similar items. The photo lab and the photo lab counter are adjacent to the front checkout area.

The pharmacy is located at the rear of the store. The pharmacy counter has two cash registers, a consulting area, and a merchandise display similar to the one at the front checkout counter. There is a “drive-thru” window staffed by pharmacy employees at the rear of the store where customers pick up prescriptions and other medical items such as aspirin or cough syrup. The stock room, receiving area, employee break room and management offices are also at the rear of the store.

The front store employees sought by the petition include two Shift Supervisors A, one Shift Supervisor B,³ one Head Cashier, 17 Clerks/Cashiers, two Night Crew Supervisors two Night Crew Clerks, one Merchandiser, one Photo Lab Supervisor, and two Photo Lab Technicians. The pharmacy has three Pharmacy Lead Technicians, seven Pharmacy Technicians, three Pharmacy Service Associates, one International Pharmacy Intern, and three Rx Delivery Drivers.

Alan Saldarelli has been the Store Manager for the last 14 years. There are also three Assistant Store Managers employed at the store.⁴ Bob Gladis, the District Manager, is a CVS corporate official responsible for the Toms River store as well as other CVS stores. Anthony Cappuccio is the Primary Health Care Manager. Like Gladis, he is responsible for several CVS stores. Cappuccio oversees the pharmacy and is responsible for hiring the Pharmacists.

There are seven Pharmacists, and one of them must always be present at the store. One of the Pharmacists, designated the Lead Pharmacist, has additional administrative and personnel responsibilities. The parties stipulated that the seven Pharmacists are professionals under Section 2(12) of the Act and should be excluded from the unit.

³ At the hearing, the parties stipulated that Shift Supervisors A and B, Night Crew Supervisors, and Photo Lab Supervisors are not supervisors within the meaning of Section 2(11) of the Act and should be included in any unit found appropriate by the Board.

⁴ The parties stipulated that the Store Manager and Assistant Store Managers are supervisors under Section 2(11) of the Act.

II. FACTORS RELEVANT TO EVALUATING THE APPROPRIATE UNIT

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Bartlett Collins Co.*, 334 NLRB No. 76 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). In determining whether the employees possess a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, interchange of employees, contact among employees, fringe benefits, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837, 839 (1990).

In the retail industry a storewide unit has long been held to be presumptively appropriate. However, the Board has also found that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. See *Sears Roebuck & Co.*, 184 NLRB 343 (1970); *Montgomery Ward & Co., Inc.*, 150 NLRB 598 (1964). Thus, applying community of interest principles, the Board has specifically carved out separate appropriate units within single retail establishments for various departmental groupings of employees. See e.g., *Wal-Mart Supermarkets, Inc.*, 328 NLRB 904 (1999) (separate unit of meat department employees in a supermarket); *Rich's Inc.*, 147 NLRB 163, 165 (1964) (separate unit of bakery employees in a department store); *The Washington Palm, Inc.*, 314 NLRB 1122 (1994); (separate unit of kitchen employees in a restaurant).

III. FACTS

A. Employee Skills and Duties⁵

The two *Pharmacy Service Associates (PSAs)* spend approximately 90 percent of their time operating the cash register and their remaining time performing customer service functions. They assist customers in locating products, take prescription orders, answer telephones, and respond to simple questions relating to prescriptions. They also clean the pharmacy area and bag trash for the front store employees to remove. PSA is viewed as an entry-level position that can lead to a promotion to a Pharmacy Technician position after a PSA has gained sufficient experience and training.

The *Pharmacy Technicians* spend approximately 50 percent of their time operating the cash register. They spend the other half of their time processing prescription orders, which generally involves entering patient and prescription information into the computer, getting the medication from the proper shelf, and giving it to the Pharmacist. Pharmacy Technicians

⁵ The record does not contain information about the specific job duties or skills for the Merchandiser.

personally fill prescription orders for the most popular medications using computerized equipment called Baker Cells to dispense the medication into vials. The Pharmacy Technicians ensure that they dispensed the proper medication by checking the physicians' handwritten prescription against the computerized entry and by comparing the dispensed pill with a picture of the pill on the computer. Pharmacy Technicians also answer telephone calls from customers, stock sale circulars in the pharmacy, and review product expiration dates throughout the store once a month.⁶ They also operate a hand-held device that is used to transmit orders to an outside vendor.⁷ According to Saldarelli, they also clean the sales floor around the pharmacy, but employee Christopher James testified that he has never seen a pharmacy employee cleaning the floor.⁸

Like the Pharmacy Technicians, the three *Lead Pharmacy Technicians* spend 50 percent of their time operating the cash register and the remainder of their time performing customer service functions. They enter data into the computer, fill prescriptions using the Baker Cell, and order supplies from the outside vendor using the hand-held device. They also oversee the work of other pharmacy employees and transmit information to them from the Store Manager. Lead Pharmacy Technicians are sometimes assigned by the Store Manager to other responsibilities such as restocking the counter items in the pharmacy.⁹

The *International Pharmacy Intern* worked as a pharmacist in another country but does not have a license to work as a Pharmacist in the United States. He performs essentially the same functions as the Pharmacy Technicians, that is, operating the cash register, processing prescriptions, and dealing with customers.¹⁰

There are three *Rx Delivery Drivers* employed at the store. Rx Delivery Drivers work from 10:00 a.m. to 4:00 p.m. They deliver prescription medication to customers' homes and bring the customer's payment to the pharmacy employee at the cash register. In addition, they deliver non-pharmaceutical merchandise to customers who have ordered pharmacy items and sometimes select these items from the sales floor. Rx Delivery Drivers deliver non-pharmaceutical items to "shut-ins" even if they have not also ordered pharmaceutical merchandise. They are not trained in how to work the cash registers or any other store equipment and do not relieve any other employees.

⁶ Saldarelli testified that all employees are required to review expiration dates, although the pharmacy employees are asked to do so more often.

⁷ The front store uses a similar device called a symbol unit to order merchandise for the entire store.

⁸ Christopher James was the only store employee to testify at the hearing. James has been employed at the store for nine months as a part-time Cashier/Clerk while he attends high school. He works between 15 and 35 hours per week. James' schedule varies from week to week, although he typically works during the evening hours. James' father is a business agent for Petitioner.

⁹ The restocking of shelves is primarily a front store responsibility. If the pharmacy display is low, the Clerk/Cashier will retrieve stock from the stock room and then a pharmacy employee will restock the shelves.

¹⁰ The record does not indicate how long the internship lasts or whether there is a special hiring or certification process for this position.

The *Clerk/Cashiers* and *Night Clerks* spend the majority of their time operating the cash register at the front store area. They assist customers, change prices on items, process damaged and returned merchandise, clean and vacuum the store, take out trash, and restock and straighten shelves and displays. Clerk/Cashiers are also responsible for unloading deliveries twice a week, which can take anywhere from three to five hours at a time. They unload pharmacy and non-pharmacy merchandise from the receiving area at the back of the store using floor jacks and bring pharmacy merchandise to the pharmacy in 15 to 20 gallon plastic containers. Pharmacy staff then unpacks the pharmacy merchandise in the store. Front store employees carry front store merchandise to the sales floor or send it upstairs via an electronic conveyor belt, and they use a crusher/bailer located in the stock room to crush the boxes after they have unpacked them.¹¹ Clerk/Cashiers are not permitted to ring up pharmacy items at the front store.

There are two *Photo Lab Technicians* and one *Photo Lab Supervisor* currently employed at the store. Photo lab employees develop film and ring it up for customers. The Employer processes “one-hour” photographs in the store’s photo lab, while all other photo lab services, including overnight developing, are provided by an outside vendor.

B. Contact, Interchange and Transfers

Front store employees are sometimes assigned to the pharmacy if a pharmacy employee calls out unexpectedly or if the pharmacy is understaffed for other reasons. On those occasions, the front store employee can only operate the cash register and does not fill prescriptions or use Baker Cells or the computer. Saldarelli did not indicate how frequently front store employees work at the pharmacy.

Saldarelli testified that pharmacy employees also fill in as needed for front store employees at the checkout area upon the request of a manager. However, he did not know how frequently these substitutions occur, and the only example he recalled was during a blizzard.¹² Pharmacy employees can operate the cash register in the photo lab but cannot operate any photo lab equipment or perform any work that requires certification.

Because the store is situated in a retirement community and caters to an older clientele, employees frequently need to assist customers in locating products and understanding product promotions. Front store employees regularly accompany customers to the sales floor or take them to the pharmacy for a product recommendation from a member of the pharmacy staff. If front store employees receive telephone calls from customers with pharmacy questions, they will either direct the customers to call the pharmacy or connect them directly to the pharmacy. All employees, whether in the front store or the pharmacy, are also required to ring up incremental sales or returns. According to Saldarelli, between 30 and 50 percent of the merchandise rung up

¹¹ While Saldarelli testified that all employees use this equipment, James testified that he has never seen a pharmacy employee using a floor jack or crusher.

¹² In fact, if the front checkout area requires an employee, a manager would fill in before calling upon a pharmacy employee to do so. James testified that he has never seen a pharmacy employee working in the front store.

at the pharmacy consists of non-pharmacy items, and if the returned item is undamaged, it is reshelfed by whatever department accepted the return.¹³ While customers may pay for front store merchandise at the pharmacy, they may not pay for pharmacy items at the front store. All customer service problems, whether in the front store or in the pharmacy, are handled by the managers or Shift Supervisors.

Saldarelli testified that front store and pharmacy employees frequently come into contact when they are assisting the same customer and when they are in the breakroom, parking lot, or common entrance. However, James testified that in his time at the store, he has hardly ever interacted with pharmacy employees and that while he sometimes sees pharmacy employees in the breakroom, they eat in the back of the pharmacy most of the time.¹⁴

Saldarelli testified that employees have, at their request, been transferred between the front store and the pharmacy many times, but he only provided two examples of employees who transferred from the pharmacy to the front store. He stated that if an employee requests to transfer in or out of the pharmacy, he consults with the Lead Pharmacist before making the decision whether to approve the request.

C. Supervision

Hiring

Saldarelli has overall responsibility for the store's hiring and makes all final hiring decisions. The store posts separate "Help Wanted" signs for the front store and the pharmacy. Applications are submitted to Saldarelli, and he screens the applicants and schedules interviews. All front store applicants except applicants for the Shift Supervisor position have one interview with Saldarelli. Applicants for the Shift Supervisor position have a second interview with the District Manager.

With respect to pharmacy positions, after the applicant's first interview, if Saldarelli decides the applicant would be a good candidate, he will arrange a second interview with a Lead Pharmacist. The Lead Pharmacist sometimes asks the applicant technical questions about his or her experience. After the second interview, the Lead Pharmacist and Saldarelli discuss the applicant, and if they want to hire him or her, the applicant is required to pass a background check and a drug test. Front store employees do not need to pass a background check or take a drug test. Saldarelli makes the final decision as to hiring.¹⁵

¹³ James testified that the front store and pharmacy have separate red baskets for returns, and the pharmacy employees give the returns to front store employees either to reshelve or bring to the front checkout to be logged in as damaged.

¹⁴ There is a coffee pot in the back of the pharmacy.

¹⁵ He did not give any examples of occasions where he acted contrary to the Lead Pharmacist's recommendation.

Scheduling

There are separate work schedules for the front store and the pharmacy. Saldarelli prepares the schedule for the front store employees based on the store's operating needs. For the last 10 months, the Lead Pharmacist has prepared the schedule for the pharmacy employees, with input from the Lead Pharmacy Technician. The front store schedule is posted at the front checkout area and in the photo lab, and the pharmacy schedule is posted in the pharmacy. Saldarelli testified that a combined schedule for front store and pharmacy employees is posted in the breakroom; however, James testified that he has never seen a combined schedule.

Discipline

The Store Manager has overall responsibility for discipline throughout the store, but the Lead Pharmacist has the authority to handle minor disciplinary matters in the pharmacy. The Lead Pharmacist may verbally warn pharmacy employees without consulting Saldarelli beforehand or telling him about it afterwards. The Lead Pharmacist also has the authority to issue pharmacy employees written warnings, but he must speak with Saldarelli before counseling the employee, and Saldarelli participates in the counseling session. The Store Manager makes all disciplinary decisions as to more serious infractions.¹⁶

Performance Reviews and Wage Increases

Saldarelli writes performance reviews for the front store employees and works with the Lead Pharmacist to write them for the pharmacy employees. Employees typically receive merit increases after one year of employment, and Saldarelli must approve these increases for all employees. Employees who receive certifications in certain departments, such as Kodak photo lab certifications, automatically receive increases, without the need for Saldarelli's approval.

D. Training

Once hired, all employees undergo a three to four hour training program run by Saldarelli, during which they watch training videos and complete paperwork. They are also oriented on the location of items in the store. All store employees except Rx Delivery Drivers are then trained on how to operate the cash registers, which takes between four and 12 hours, depending on the employee's aptitude. Employees must pass a written test from Kodak to be certified to work in the photo lab.

Pharmacy employees receive on-the-job training from the Lead Pharmacy Technician or Lead Pharmacist and also receive various types of off-site training. All pharmacy employees except Rx Delivery Drivers are sent to a training facility to learn how to use the computers and other technical equipment. In addition to that training, PSAs complete a one to two day training course in basic pharmacy terminology after which they are certified. Pharmacy employees at higher levels must also receive certifications by completing training modules for their respective

¹⁶ The record does not indicate whether the Lead Pharmacist makes recommendations concerning such discipline, and if so, whether such recommendations are followed.

positions.¹⁷ All pharmacy employees are required to complete a computer training program in new patient confidentiality procedures under the Health Insurance Portability and Accountability Act of 1996 (HIPAA); Saldarelli testified that non-pharmacy employees will receive the same training so they can work in the pharmacy if necessary. While Saldarelli testified that front store employees also receive some pharmacy training to relieve pharmacy employees, he did not specify the type of training or how long it takes to complete, and James testified that he did not receive any pharmacy training.

E. Wages

All store employees are paid according to a common wage schedule, depending on their job classification. There are six wage scales at the store. In the front store, the Clerk/Cashiers are the lowest paid classification, earning between \$6.25 and \$8.59 per hour. Photo Lab Technicians earn between \$7 and \$7.21 and the Photo Lab Supervisor earns \$8.00. The Merchandiser receives \$9.25, the Head Cashier earns \$10.44, and the Shift Supervisors earn between \$11.97 and \$13.52.

In the pharmacy, PSAs earn between \$6.75 and \$7.25 per hour, Rx Delivery Drivers earn \$8.50, Pharmacy Technicians earn between \$7.83 and \$14.93, Pharmacy Lead Technicians earn between \$10.50 and \$13.26, and the International Pharmacy Intern earns \$18.50. All store employees receive the same benefits.

The average hourly wage for pharmacy employees is \$10.62 while the average wage for front store employees is \$7.92. The highest wage for a pharmacy employee is for the International Pharmacy Intern, who earns \$18.50 while the highest wage for a front store employee, a Shift Supervisor, is \$13.52.

F. Labor Relations Policies and Work Rules

The same labor relations policies apply to all store employees, and the Store Manager and Assistant Store Managers are responsible for enforcing these policies. All employee personnel files are kept in a locked cabinet in the management office in the front of the store. No separate employee records are kept in the pharmacy.

All employees clock in by logging into the cash register. The register recognizes whether the employee is a front store or pharmacy employee so employees can clock in on any register in the store. Information on hours worked is automatically transferred from cash registers to the store's computer, where they are printed out. The front store and pharmacy also submit separate payroll sheets once per week, and front store management or Cashier/Clerks personally distribute paychecks every Friday.

¹⁷ The record does not clearly indicate how long it takes for an employee to complete the training module to advance from PSA to Pharmacy Technician or from Pharmacy Technician to Lead Pharmacy Technician, although Saldarelli testified they may require as little as a few days or as long as several months.

The managers prepare the payroll for the entire store, and there is a single profit and loss statement.¹⁸ Supervisors collect the money from the cash registers in both the front store and pharmacy, count it in the management office, and make a single bank deposit.

The Employer holds regular storewide staff meetings, which are attended by the Store Manager and Primary Health Care Manager. Employees are sometimes separated into groups of pharmacy and/or front store employees after the meeting if it is necessary to discuss a new procedure that applies only to one side of the store.

The pharmacy has specific safety rules for dealing with controlled substances. For example, the pharmacy must be staffed at all times, and if there are no employees present the pharmacy must be locked.

All pharmacy employees wear white lab jackets, while all front store employees other than photo lab employees wear polo shirts. Photo lab employees wear white lab coats with the words “Kodak certification” sewn on the sleeve.

G. Bargaining History

There is no evidence of any collective bargaining history at the store.

IV. ANALYSIS

There are significant differences between the front store employees and the pharmacy employees. They are located in physically separate areas within the store, and there are critical disparities between their skills and responsibilities. Most pharmacy employees spend a substantial portion of their time filling prescription orders, entering data into the computer and double-checking for accuracy. Pharmacy employees must be familiar with pharmacy terminology and medications in order to carry out their responsibilities properly, and employee errors as to medications obviously can have serious consequences. In contrast, other than operating the cash register, front store employees are responsible for cleaning the sales floor, stocking shelves, unloading deliveries, and taking out the trash, none of which require specialized knowledge or training. Front store and pharmacy employees also utilize different equipment to perform their job functions. In particular, unlike front store employees, pharmacy employees use Baker Cells and a computer to dispense and track medications. Because of the specialized nature of their jobs, pharmacy employees receive more training than front store employees. While all employees other than Rx Delivery Drivers receive training in operating cash registers and a brief store orientation, pharmacy employees also receive off-site training in computers and technical equipment used in the pharmacy. Pharmacy employees must complete training modules to become certified for their respective positions and these modules may require as long as several months to complete. Moreover, because pharmacy products require strict controls, customers may not pay for pharmacy items at the front store, pharmacy

¹⁸ The store sends financial performance documents for entire store to CVS’s corporate headquarters in Rhode Island.

merchandise must be unloaded exclusively by pharmacy staff, and pharmacy employees are subject to more stringent safety rules. The difference in training and expertise is reflected in employees' wages, as the average hourly wages for the pharmacy employees is almost \$3 higher than for front store employees.

In addition, different corporate management officials are responsible for the front store and pharmacy areas, and the pharmacy and front store employees have separate immediate daily supervision. Thus, Primary Health Care Manager Cappuccio oversees the pharmacy and is responsible for hiring the Pharmacists, who have a substantial influence over the working life of the pharmacy employees. The Lead Pharmacist is in charge of the pharmacy and issues verbal warnings to pharmacy employees without consulting the Store Manager. He also has the authority to issue written warnings, although he must discuss these warnings with the Store Manager. The Lead Pharmacist does the scheduling for the pharmacy, while the Store Manager does the scheduling for the front store. The hiring process for the front store and the pharmacy is also somewhat different. Notably, the store advertises separately for pharmacy and front store positions. Front store applicants need only have one interview with the Store Manager before being hired, while pharmacy applicants are required to have a second interview with the Lead Pharmacist. Unlike front store employees, pharmacy employees are required to pass a background check and a drug test.

Finally, there is no substantial contact or interchange between front store employees and pharmacy employees. Front store employees fill in for pharmacy employees infrequently, and when they do so, they do not perform all of the functions of the pharmacy employees but can only operate the cash register. Similarly, pharmacy employees fill in for front store employees only on an irregular basis. There is minimal evidence of employees permanently transferring between the pharmacy and the front store. In fact, Saldarelli could only name two individuals who transferred during his 14 years at the store. Additionally, interaction between the two groups is not extensive. While front store and pharmacy employees may see each other in the breakroom or while entering or exiting the store, their contact during work time is limited to those few instances when they are assisting the same customer with a customer service issue.

Certainly, there are meaningful similarities between front store and pharmacy employees. Thus, they all spend a substantial portion of their time operating cash registers and performing customer service functions, work similar hours, and "clock in" by punching their names into a cash register. All employees receive the same benefits, and personnel files for the entire store are maintained in the management office. The store generates a common payroll for all employees, and the profitability of the store is considered as a whole, although it is also separately broken down by front store and pharmacy. Finally, the store manager has overall supervisory responsibility for both the front store and the pharmacy. Based on these similarities, a storewide unit, as proposed by the Employer, would be appropriate.

I find, however, that the record amply demonstrates that the pharmacy employees have a distinct community of interest apart from the front store employees based on their higher level of skill, separate daily supervision, higher wages, and minimal interchange with and physical separation from front store employees. I therefore find that the unit of front store employees sought by the Petitioner also comprises an appropriate unit, and I shall direct an election in that

unit. *Super K Mart Center*, 323 NLRB 582 (1977); *Rich's Inc.*, supra. Cf. *Ray's Sentry*, 319 NLRB 724 (1994).¹⁹

The record establishes that the Rx Delivery Drivers have even less of a community of interest with the front store employees than do the other pharmacy employees. Rx Delivery Drivers have very little contact with front store employees as they work different hours and spend the majority of their work time outside of the store. In addition, Rx Delivery Drivers perform entirely different work than front store employees. Since they are not trained in how to operate the cash register, they never relieve front store employees at the front check-out counter. Finally, unlike front store employees, Rx Delivery Drivers must have a second interview with the Lead Pharmacist and pass a drug test and background check before they are hired. Accordingly, I shall exclude them from the unit.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain of the employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time non-pharmacy employees, including Shift Supervisors "A," Shift Supervisors "B," Night Crew Supervisors, Head Cashiers, Clerk/Cashiers, Night Crew Clerks, Merchandisers, Photo Lab Supervisors, and Photo Lab Technicians, employed at the Employer's 53 Bananier Drive, Toms River, New Jersey store, excluding all other employees, including Rx Delivery Drivers, Pharmacy Service Associates, Pharmacy Technicians, Pharmacy Lead Technicians, International

¹⁹ In *Ray's Sentry*, cited by the Employer, the Board reversed a regional director's finding that a separate unit of bakery and delicatessen employees in a supermarket was appropriate. I find that case distinguishable, because the bakery/deli employees did not require specialized skills or training to perform their work. Indeed, the bakery/deli employees received generally lower wages than other store employees.

Pharmacy Interns, Pharmacists, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by Retail Wholesale and Department Store Union, Local 338, UFCW, AFL-CIO. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 22, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **May 29, 2003**.

Signed: May 15, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

420-0100	440-1760-3600
420-2906	440-1760-9133-4300
420-2930	440-1760-9167-4833
420-2933	
420-2936	
420-2966	
420-5034	

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